

JUN 12 2003

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

ROBERT KRIEGER,

Plaintiff - Appellant,

v.

JO ANNE BARNHART, Commissioner of
Social Security,*

Defendant - Appellee.

No. 01-35742

D.C. No. CV-00-01281-HO

ORDER

Before: KLEINFELD and McKEOWN, Circuit Judges, and BREYER, District Judge.

The memorandum disposition filed on February 28, 2003, is amended as follows:

1. On page 4 of the memorandum disposition, before the sentence

* Jo Anne Barnhart is substituted for her predecessor as Commissioner of the Social Security Administration. Fed. R. App. P. 43(c)(2).

** Honorable Charles R. Breyer, United States District Judge for the Northern District of California, sitting by designation.

beginning “Finally, the ALJ’s determination regarding the negative effect . . .”, insert the following sentence: “In addition, notwithstanding Washington State Department of Social and Health Services v. Keffeler, 537 U.S. 371 (2003), we need not decide whether deference to the POMS is required because the result will not be affected.”

With the foregoing amendments to the memorandum disposition, the panel has unanimously voted to deny appellant’s petition for rehearing. Judges Kleinfeld and McKeown have voted to deny the petition for rehearing en banc and Judge Breyer so recommends. No further petitions for rehearing will be entertained.

The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are DENIED.